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14

15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION  
17

18 WINSON TANG,

19 Plaintiff,

20 v.

21 LINDSAY ROSENWALD, et al.,

22 Defendants.  
23  
24  
25  
26  
27  
28

Case No. 2:16-cv-1317-MWF-PLA

**MEMORANDUM OF LAW IN  
OPPOSITION TO PLAINTIFF'S  
MOTION TO REMAND**

Hon. Michael W. Fitzgerald  
Date: April 25, 2016  
Time: 10:00 a.m.  
Place: Courtroom 1600

Action Filed: January 15, 2016  
Action Removed: February 25, 2016

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## I. INTRODUCTION

Defendant Mustang Bio, Inc. (“Mustang”) planned to hire Plaintiff Winson Tang as its chief operating officer, but he lost that chance after the Securities and Exchange Commission (“SEC”) named him as the tippee in an insider trading scheme at another biotech company. *See SEC v. Fishoff*, No. 3:2015-cv-03725 (D.N.J.). Frustrated by the loss of this opportunity, Dr. Tang has brought this lawsuit against Mustang and its principals, New York and Delaware citizens, alleging a vested right to 15% of the entire company, apparently as a finder’s fee, even though his draft employment agreement (which was never finalized) had contemplated his earning those shares through service and performance over time.

This Court plainly has diversity jurisdiction over this action. The plaintiff, a California resident, has sued five out-of-state residents, whom he variously (and inconsistently) claims had promised him 15% of Mustang’s shares. Because there is complete diversity among all properly joined parties (the “Mustang Defendants”), and the amount in controversy exceeds \$75,000, this action falls within the diversity jurisdiction of this Court, and the Motion to Remand should be denied.

Dr. Tang challenges this Court’s jurisdiction because he has fraudulently joined one non-diverse defendant, City of Hope (“COH”), in a transparent effort to destroy federal jurisdiction. Dr. Tang’s initial complaint did not seek any relief against COH. The Complaint did not allege any acts that COH had taken to breach any legal duty to plaintiff, but instead claimed that COH was a “necessary party” because it owned 10% of the shares of Mustang, and Dr. Tang was seeking to order the Mustang Defendants to award him 15% of Mustang’s shares. However, COH’s share in Mustang will not change at all, regardless whether or not Dr. Tang succeeds in this litigation. Thus, COH was plainly not a necessary or a proper defendant at the time this action was removed.

Recognizing the deficiencies of the original Complaint, Dr. Tang responded by amending the Complaint for the sole purpose of stating claims against COH. In

1 the Amended Complaint, Dr. Tang has invented an “oral contract” pursuant to  
 2 which COH supposedly agreed to negotiate a future license with a not yet created  
 3 “‘Newco’ owned, in part, by Dr. Tang.” Am. Compl. ¶ 38. This is truly a frivolous  
 4 claim.

5 Dr. Tang’s allegations of an oral contract, and his alternative claim for  
 6 promissory estoppel, are entirely conclusory. Among these various deficiencies,  
 7 Dr. Tang alleges, not a contract, but merely an agreement to start negotiations,  
 8 particularly given that the “Newco” did not exist and the parties are not alleged to  
 9 have agreed upon any of the license’s terms. In addition, while alleging that COH  
 10 had promised to include him in any future license agreement, Dr. Tang does not  
 11 allege any consideration at all that *he* provided to COH or anything he did in  
 12 reliance for this propose. Dr. Tang cannot destroy diversity jurisdiction by  
 13 fraudulently joining COH. The Motion to Remand should be denied.

## 14 **II. STATEMENT OF FACTS**

15 As alleged in the Amended Complaint, on July 7, 2013, Dr. Tang contracted  
 16 with Opus Point Partners (“Opus”), a biotech investment fund, to provide  
 17 information concerning emerging medical technologies and to work together to  
 18 license them. Am. Compl. ¶ 11. A year later, Dr. Tang informed Dr. Rosenwald, a  
 19 principal of Opus, about COH’s CAR-T technology, a promising new cancer  
 20 treatment. *Id.* ¶ 12. Dr. Rosenwald, his partner, Mr. Weiss, and Dr. Tang then  
 21 proceeded to negotiate a license agreement with COH. *Id.* ¶¶ 13-20. Dr.  
 22 Rosenwald and Mr. Weiss created and funded Mustang to license the technology,  
 23 and Mustang and COH entered into a license agreement on March 17, 2015 (the  
 24 “License Agreement”). *Id.* ¶ 20.

25 The Mustang Defendants expected that Dr. Tang would play an executive  
 26 role at Mustang and have the chance to earn an equity interest in compensation. In  
 27 the spring of 2015, the Mustang Defendants and Dr. Tang negotiated an  
 28 employment agreement and exchanged drafts; the written correspondence between



1 the sides described Dr. Tang as receiving an unvested 15% share in Mustang that,  
2 based upon his performance and certain benchmarks, would gradually become  
3 vested. The Mustang Defendants originally contemplated that Dr. Tang would  
4 become the CEO of Mustang, but after COH objected, discussed his assuming the  
5 role of COO. As of June 2015, the parties were still discussing Dr. Tang's role, and  
6 had not yet entered into a binding employment agreement.

7 On June 3, 2015, the SEC commenced the *Fishoff* action, which named Dr.  
8 Tang, then Vice President of Clinical Research at Sangamo, as Insider A in an  
9 insider trading scheme. According to the SEC's complaint, prior to Sangamo's  
10 announcing a licensing agreement with Biogen Idec, Inc., Dr. Tang leaked  
11 information about those negotiations to a friend, who passed that information on to  
12 traders who netted \$1.2 million off of it. Dr. Tang's material involvement in the  
13 *Fishoff* case made it impossible for him to serve as an officer of Mustang. As a  
14 start-up company, Mustang's business plan contemplates the ability to raise capital  
15 from public markets, and such efforts would be impossible if one of its senior  
16 officers was involved in an insider trading scheme. The Mustang Defendants  
17 discussed with Dr. Tang other opportunities and compensation, but he refused those  
18 overtures and claimed a vested 15% ownership in Mustang, even though he had not  
19 performed services for the company and would not in the future. The Mustang  
20 Defendants have founded dozens of biotech companies, and have never provided a  
21 15% vested share to someone who had neither performed an executive role nor  
22 invested any money. Dr. Tang knows full well that no one receives a 15% share as  
23 a "finder's fee," and any entitlement to an equity stake would have vested only after  
24 years of service.

25 On January 15, 2016, Dr. Tang filed his initial complaint in Los Angeles  
26 County Superior Court, No. BC 607346, alleging breaches of contract, promissory  
27 estoppel, and fraud. On February 25, 2016, Defendants properly removed to this  
28 Court under 28 U.S.C. § 1441.

1 The Notice of Removal demonstrated that (1) complete diversity exists  
 2 among all *properly joined* parties and that the amount in controversy exceeds  
 3 \$75,000, exclusive of interests and costs; and (2) Dr. Tang fraudulently joined  
 4 COH, the only non-diverse defendant, and thus its presence would not defeat  
 5 diversity jurisdiction. Dr. Tang is a citizen of California, and the Mustang  
 6 Defendants are citizens of New York and/or Delaware.<sup>1</sup> Am. Compl. ¶¶ 3-9; Mot.  
 7 to Remand at 2 & n.1. The damages sought exceed \$75,000. Mot. to Remand at 2  
 8 n.2. The sole issue is whether COH is a proper party to this action.

9 Defendants showed in their Notice of Removal that COH was not a proper  
 10 party to the original Complaint because (1) Dr. Tang pled no affirmative claims  
 11 against COH; and (2) Dr. Tang's claim to be a third-party beneficiary to the License  
 12 Agreement was insufficiently pled and would not state any claim against COH.  
 13 Notice of Removal ¶¶ 11-22. As Dr. Tang admits in the Motion to Remand, he  
 14 pled his claim against COH in the alternative, did not identify any wrongful act by  
 15 COH in breach of any legal duty, and did not seek any relief against it. Mot. to  
 16 Remand at 1-2; Notice of Removal ¶¶ 11, 14-18. Instead, Dr. Tang claimed that he  
 17 was a third-party beneficiary to the License Agreement between COH and  
 18 Mustang. However, these allegations were entirely conclusory and contradicted by  
 19 others in the Complaint. Notice of Removal ¶¶ 19-22.

20 Additionally, Dr. Tang's claim that COH was a necessary party to this action  
 21 was wrong as a matter of law. *Id.* ¶ 18. In his Complaint, Dr. Tang claimed an  
 22 entitlement to 15% of Mustang's equity, based on a stock ownership chart that  
 23 identifies COH as a 10% owner. *Id.*; Ex. B to Notice of Removal; Compl. ¶ 59. He  
 24 alleged that he joined COH because "its ownership interest in Mustang and the  
 25

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26 <sup>1</sup> For reasons unclear, Dr. Tang has named, but not served, fictitious defendants  
 27 "Does 1-10." 28 U.S.C. § 1441(b)(1) provides that for purposes of removal, "the  
 28 citizenship of defendants sued under fictitious names shall be disregarded." *See*  
*also Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) (unnamed  
 defendants are not required to join in a removal petition). Thus, the citizenship of  
 the Doe Defendants (if they exist) is irrelevant to the remand analysis.

1 license would be diluted if Dr. Tang is also a 15% capital stock holder.” Compl.  
 2 ¶ 59. But that is untrue. Even if Dr. Tang received his 15%, that would have no  
 3 legal effect on COH, because it received 10% as consideration under the License  
 4 Agreement, no matter whether Dr. Tang was part of the company. Dr. Tang has not  
 5 alleged, and cannot allege, that COH’s 10% share would change one whit if Dr.  
 6 Tang receives the relief he seeks. Notice of Removal ¶ 18.

7 Shortly after Defendants removed, Dr. Tang filed an Amended Complaint on  
 8 March 14, 2016. The sole purpose of these amendments was to buttress the non-  
 9 existent claims against COH and to support his anticipated Motion to Remand. In  
 10 addition to repeating the claim that COH is a necessary party and that Dr. Tang is a  
 11 third-party beneficiary to the License Agreement, Am. Compl. ¶¶ 60-67, Dr. Tang  
 12 now alleges that COH somehow orally agreed *with him* to license its technology to  
 13 a to-be-formed company in which he would have an ownership interest; he also  
 14 tacks on a promissory estoppel claim, *id.* ¶¶ 37-50. The weakness of the new  
 15 claims only confirms that COH has been fraudulently joined.

### 16 **III. STANDARD OF REVIEW**

17 Pursuant to 28 U.S.C. § 1441, Defendants may remove to federal court an  
 18 action filed in state court if there is complete diversity among all *properly joined*  
 19 and served parties and the amount in controversy exceeds \$75,000, exclusive of  
 20 interests and costs. 28 U.S.C. § 1441; *see also* 18 U.S.C. 1332(a). The presence of  
 21 a non-diverse defendant will not defeat removal if that defendant was fraudulently  
 22 joined. As the Ninth Circuit has recognized, the “[j]oinder of a non-diverse  
 23 defendant is deemed fraudulent, and the defendant’s presence in the law suit is  
 24 ignored for purposes of determining diversity, if the plaintiff fails to state a cause of  
 25 action against a resident defendant, and the failure is obvious according to the  
 26 settled rules of the state.” *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067  
 27 (9th Cir. 2001) (internal quotation marks omitted); *see also Khashan v. Ghasemi*,  
 28 No. CV 10-00543, 2010 WL 1444884, at \*2 (C.D. Cal. Apr. 5, 2010) (recognizing

1 that the fraudulent joinder doctrine reflects “a Congressional intent to prevent the  
 2 fraudulent joinder of forum defendants in order to avoid removal”). If there is no  
 3 possibility that a plaintiff can establish liability against a defendant, then joinder is  
 4 fraudulent. *See, e.g., Bear Valley Family, L.P. v. Bank Midwest, N.A.*, No. ED CV  
 5 10-905, 2010 WL 3369600, at \*2 (C.D. Cal. Aug. 23, 2010). The Ninth Circuit  
 6 permits district courts to consider facts outside the complaint to identify “the  
 7 presence of discrete and undisputed facts that would preclude plaintiff’s recovery  
 8 against the in-state defendant.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1044  
 9 (9th Cir. 2009).

10 In this action, the parties do not dispute that complete diversity exists  
 11 between Dr. Tang and the Mustang Defendants, and there is no dispute that the  
 12 amount in controversy exceeds \$75,000. The sole dispute is to whether COH has  
 13 been fraudulently joined, that issue admits of only one answer. Dr. Tang clearly  
 14 does not state any claims against COH, and this action was the Motion to Remand  
 15 thus should be denied.

#### 16 **IV. THE CLAIMS AGAINST COH ARE INSUBSTANTIAL AND** 17 **DEMONSTRATE FRAUDULENT JOINDER**

18 Dr. Tang names COH as a defendant on three claims: the Third Cause of  
 19 Action alleges that COH breached an oral contract to negotiate a license agreement  
 20 with a to-be-created entity that would be partially owned by Dr. Tang; the Fourth  
 21 Cause of Action tries to describe those same allegations as a claim for promissory  
 22 estoppel; and the Sixth Cause of Action alleges that Dr. Tang had rights as a third-  
 23 party beneficiary to the License Agreement between COH and Mustang. All three  
 24 claims are insubstantial and demonstrate that COH has been fraudulently joined.

##### 25 **A. Dr. Tang’s Third Cause Of Action (for Breach of Contract)** 26 **Fails To State A Claim Against COH**

27 Dr. Tang’s third cause of action posits the existence of “an oral contract  
 28 pursuant to which City of Hope agreed to license the CAR-T technology to a

1 ‘Newco’ owned, in part, by Dr. Tang.” Am. Compl. ¶ 38. To state a claim for  
 2 breach of contract, a plaintiff must allege sufficient facts to show: “(1) the contract,  
 3 (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach,  
 4 and (4) damage to the plaintiff therefrom.” *Neumann v. Allstate Ins. Co.*, No. 14-  
 5 55275, 2016 WL 878823, at \*1 (9th Cir. Mar. 8, 2016) (quoting *Wall St. Network,*  
 6 *Ltd. v. New York Times Co.*, 164 Cal. App. 4th 1171, 1178 (2008)). Dr. Tang does  
 7 not plead facts to establish the existence of the contract, much less any of the other  
 8 elements of his claim.

9 1. Dr. Tang Does Not Allege The Existence Of A Contract

10 In order to properly allege the existence of a contract, the plaintiff must set  
 11 forth sufficient facts showing mutual assent, sufficiently definite contractual terms,  
 12 and consideration. *See Rockridge Trust v. Wells Fargo, N.A.*, 985 F. Supp. 2d  
 13 1110, 1141-42 (N.D. Cal. 2013) (citing *Bustamante v. Intuit, Inc.*, 141 Cal. App.  
 14 4th 199, 208 (2006)); *see also* Cal. Civ. Code §§ 1580, 1550, 1565. To show  
 15 mutual assent, the plaintiff must offer more than a conclusory assertion that the  
 16 parties “agreed” to certain terms or that the parties entered into negotiations over  
 17 future agreements. *See, e.g., Be In, Inc. v. Google Inc.*, No. 12-CV-03373, 2013  
 18 WL 5568706, at \*9 (N.D. Cal. Oct. 9, 2013); *CSI Elec. Contrs., Inc. v. Zimmer Am.*  
 19 *Corp.*, No. CV 12-10876, 2013 WL 1249021, at \*3 (C.D. Cal. Mar. 25, 2013).

20 In addition, a plaintiff alleging an oral contract must set forth that agreement  
 21 in sufficiently definite terms. *See Twaite v. Allstate Ins. Co.*, 216 Cal. App. 3d 239,  
 22 252 (1989); *Sowinski v. Wells Fargo Bank, N.A.*, No. 11-6431, 2013 WL 706825,  
 23 at \*5 (N.D. Cal. Feb. 26, 2013) (granting motion to dismiss for plaintiff’s failure to  
 24 plead “exact terms” of an oral contract); *Moore v. Wells Fargo Bank, N.A.*, No.  
 25 14cv1342, 2014 WL 4355585, at \*4 (S.D. Cal. Sept. 3, 2014) (“A claim for breach  
 26 of an oral contract must ‘set forth the substance of its relative terms.’”) (citing  
 27 *Gautier v. Gen. Tel. Co.*, 234 Cal. App. 2d 302, 305 (1965)). The plaintiff must  
 28 show the existence of mutual binding promises, or some other indication of

1 consideration. *See, e.g., Stevenson v. S.F. Hous. Auth.*, 24 Cal. App. 4th 269, 284  
 2 (1994); *Podolsky v. First Healthcare Corp.*, 50 Cal. App. 4th 632, 655 (1996); *Dole*  
 3 *Food Co., Inc. v. Super. Ct.*, 242 Cal. App. 4th 894, 911 (2015).

4 As relevant here, the California courts have regularly made clear that an  
 5 “agreement to agree” is “unenforceable under California law.” *Bustamante*, 141  
 6 Cal. App. 4th at 214. Where a party, such as COH, manifests a “willingness to  
 7 enter into a bargain,” the California courts will not deem this a valid contractual  
 8 offer if the person to whom it was addressed “knows or has a reason to know that  
 9 the person making it does not intend to conclude a bargain until he has made a  
 10 further manifestation of assent.” *Id.* (quoting *Kruse v. Bank of Am.*, 202 Cal. App.  
 11 3d 38, 59 (1988)). As the Ninth Circuit has recognized, “there is no contract where  
 12 the objective manifestations of intent demonstrate that the parties chose not to bind  
 13 themselves until a subsequent agreement [was] made.” *Rennick v. O.P.T.I.O.N.*  
 14 *Care, Inc.*, 77 F.3d 309, 316 (9th Cir. 1996).

15 The Amended Complaint contains vague allegations concerning an oral  
 16 agreement pursuant to which COH supposedly promised Dr. Tang that it would  
 17 enter into a *future* contract – a licensing agreement – with a not yet formed  
 18 “‘Newco’ owned, in part, by Dr. Tang.” Am. Compl. ¶ 38. Dr. Tang appears to  
 19 allege that “Newco” later became Mustang. *Id.* ¶¶ 17-19, 40. The Amended  
 20 Complaint, however, is not entirely clear upon when this oral contract was made.  
 21 In one paragraph, it alleges that the parties reached such an agreement on  
 22 November 13, 2014, *id.* ¶ 38, and in another, at some point “[b]etween November  
 23 2014 and March 2015,” *id.* ¶ 18. The Amended Complaint does not make any other  
 24 allegations concerning the terms of this alleged oral agreement; the scope of COH’s  
 25 duty to enter into a future licensing agreement; the terms of such a license; and the  
 26 size of Dr. Tang’s ownership interest that would satisfy the supposed obligation  
 27 that it be “partially owned” by him. In addition, the Amended Complaint does not  
 28 identify any consideration that **Dr. Tang** agreed to provide to COH in return for its



1 supposed agreement to ensure that he would be a shareholder in the future  
2 company.

3 As pled, the alleged oral promise cannot possibly be a legal contract. There  
4 are no allegations of any agreement at all, but at best, it would be an “agreement to  
5 agree” that is “unenforceable under California law.” *Bustamante*, 141 Cal. App.  
6 4th at 214; *see also Weddington Prods., Inc. v. Flick*, 60 Cal. App. 4th 793, 803-04  
7 (1998) (there is no meeting of the minds for a license agreement where material  
8 terms were not settled). At the time of the alleged promise, Mustang, the eventual  
9 licensee, did not even exist, since the oral contract purportedly concerned an  
10 unnamed “Newco.” Dr. Tang does not, and cannot, allege that the parties had  
11 agreed on any of the material (or nonmaterial) terms of the future license. Dr. Tang  
12 alleges only that COH agreed to enter into negotiations over a future license, a  
13 classic “agreement to agree,” that does not involve any meeting of the minds and  
14 cannot be enforced.

## 15 2. Dr. Tang Does Not Allege He Provided Any Consideration

16 In addition to failing to allege the terms of any agreement, Dr. Tang does not  
17 allege that he provided COH with any consideration in return for its supposed  
18 promise. The Amended Complaint offers the conclusory assertion that Dr. Tang  
19 “performed all terms and conditions” of the oral contract. Am. Compl. ¶ 39. Yet  
20 Dr. Tang neglects to allege a single term or condition the he promised to meet,  
21 much less any consideration that he provided COH. Even if Dr. Tang had plausibly  
22 alleged that COH had made a promise to him, Dr. Tang has not alleged that he  
23 provided any consideration in return, and therefore, that promise would not  
24 constitute a legally enforceable contract.

## 25 3. Dr. Tang Does Not Allege That COH Breached The Contract

26 Dr. Tang does not coherently allege that COH breached its agreement. At  
27 Dr. Tang’s urging, and allegedly with his full participation and consent, COH  
28

1 agreed to license the technology to Mustang. *Id.* ¶¶ 18-20.<sup>2</sup> The Amended  
 2 Complaint does not contain a single allegation that COH did something contrary to  
 3 Dr. Tang's wishes. Indeed, Dr. Tang claims that he has a legal right to own 15% of  
 4 Mustang, and if he is correct, then COH plainly would have complied with its  
 5 obligations under the supposed "oral contract." If Dr. Tang is not correct (as the  
 6 Mustang Defendants contend), then that would be because Dr. Tang had not earned  
 7 his interest in Mustang. It would not be because COH did anything to breach an  
 8 oral agreement with Dr. Tang.

9 The Amended Complaint does not identify a single act that COH took in  
 10 breach of its supposed contract. The Amended Complaint offers the conclusory  
 11 allegation that "Defendants, including City of Hope" have claimed that he lacks any  
 12 interest in Mustang. *Id.* ¶ 40. COH has never had any occasion or any interest in  
 13 taking a position on Dr. Tang's shares. As the Amended Complaint makes clear,  
 14 that issue is between him and the other Defendants. All COH is alleged to have  
 15 done is to have licensed the technology, with Dr. Tang's consent and participation,  
 16 to Mustang, an entity in which he claims he has an interest. Dr. Tang does not  
 17 identify any breach of contract by COH.

#### 18 4. Dr. Tang Does Not Allege How COH Damaged Him

19 The Amended Complaint also does not contain any allegations that COH  
 20 caused him any injury. As the Ninth Circuit has recognized, "[u]nder California  
 21 law, a breach of contract claim requires a showing of appreciable and actual  
 22 damage." *Aguilera v. Pirelli Armstrong Tire Corp.*, 223 F.3d 1010, 1015 (9th Cir.  
 23 2000); *see also Buttram v. Owens-Coming Fiberglass Corp.*, 16 Cal. 4th 520, 531  
 24 n.4 (1997) ("[T]o be actionable, harm must constitute something more than nominal

25 \_\_\_\_\_  
 26 <sup>2</sup> The Amended Complaint emphasizes that an exhibit to the License Agreement  
 27 between COH and Mustang identified Dr. Tang as a 15% shareholder in Mustang.  
 28 An exhibit to a License Agreement to which he is not a party cannot confer upon  
 Dr. Tang any vested right to Mustang shares, but it certainly does confirm that  
 COH, in entering into the License Agreement, did not take any action to breach this  
 supposed oral agreement with Dr. Tang.



1 damages, speculative harm, or the threat of future harm-not yet realized.”); *Stein v.*  
 2 *Bank of Am., N.A.*, No. 2:10-cv-02827, 2011 WL 4594916, at \*2-3 (E.D. Cal. Feb.  
 3 23, 2011) (dismissing breach of contract claim where plaintiff merely alleged that  
 4 she “suffered damages . . . caused by Defendants’ breach of the agreement.”).

5 Here, Dr. Tang’s damages allegations are entirely conclusory. As in *Stein*,  
 6 2011 WL 4594916 at \*2-3, he alleges only that “[a]s a direct result of Defendant’s  
 7 breach of contract, he has suffered damages in an amount to be proven at trial, but  
 8 not less than the jurisdictional minimum of this Court.” Am. Compl. ¶¶ 39-41. Dr.  
 9 Tang does not provide any allegations to establish the amount of damages, or how  
 10 such damages were proximately caused by COH’s actions. These conclusory  
 11 damages allegations fails to satisfy the pleading requirements of federal or  
 12 California law.

13 5. Dr. Tang’s Reference To A Statement In The Joint Rule 26(f) Report  
 14 Has No Relevance To The Third Cause of Action

15 In the Motion to Remand, Dr. Tang argues that a passing statement from the  
 16 Joint Rule 26(f) Report—concerning COH’s position on Dr. Tang’s service as  
 17 Mustang’s CEO—reveals that “CoH may actually be the defendant *most culpable*  
 18 for the wrongful disavowal of his promised equity interest in Mustang,” because  
 19 somehow it could have “*induced* the other Defendant to breach the contracts to  
 20 which they were parties.” *Id.* As with the amendments to his Complaint, this  
 21 argument only confirms the absence of any real claims against COH and  
 22 underscores why the Motion to Remand should be denied.

23 Dr. Tang has brought this action because he claims a right to Mustang’s  
 24 equity. He has never before objected to the fact that he was not Mustang’s CEO.  
 25 Indeed, Mr. Weiss, with Dr. Tang’s full knowledge and approval, signed the  
 26 License Agreement as Mustang’s CEO. Ex. B to Notice of Removal, at 30. Thus,  
 27 any implication that Dr. Tang has learned something for the first time from the  
 28 Joint Rule 26(f) Report or that COH now may be liable to Dr. Tang because Mr.

1 Weiss became CEO is a complete *non sequitur*.

2 More fundamentally, the Amended Complaint does not premise any claims  
3 on his interest in serving as an executive at Mustang. Far from rendering COH  
4 “most culpable,” the passing remark to COH’s position on Dr. Tang’s service as  
5 CEO is entirely *irrelevant* to any argument in his Motion for Remand or any claim  
6 in his Amended Complaint. Dr. Tang has never claimed that any Mustang  
7 Defendant breached an obligation to employ him, and thus could hardly have  
8 argued that COH induced a breach in that regard.<sup>3</sup> The fact that Dr. Tang spends  
9 nearly as much time as raising this argument as he does in defending his oral breach  
10 of contract claim against COH, simply confirms the legal insufficiency of his third  
11 cause of action against COH.

12 **B. Dr. Tang’s Fourth Cause Of Action (For Promissory Estoppel)**  
13 **Fails To State A Claim Against COH**

14 In the Fourth Cause of Action, Dr. Tang tries to describe the same “oral  
15 contract” allegations as a claim that might give rise to promissory estoppel. Once  
16 again, however, the allegations in the Amended Complaint are entirely conclusory,  
17 and they cannot possibly give rise to a claim that COH made a concrete promise  
18 with an expectation that Dr. Tang would act on it to his detriment. Indeed, the only  
19 “detriment” that Dr. Tang identifies is that he worked to successfully complete a  
20 deal between COH and Mustang. It is impossible to understand how Dr. Tang’s  
21 participations in negotiations could constitute a “detriment,” or how COH could  
22 possibly become liable to him because it signed the agreement with Mustang that  
23 he had urged COH to complete.

24 To state a claim for promissory estoppel, the plaintiff must plead: (1) a clear  
25 and unambiguous promise; (2) reasonable and foreseeable reliance; (3) detrimental

26 \_\_\_\_\_  
27 <sup>3</sup> COH was impressed by Mr. Weiss and Dr. Rosenwald and required in Article 6.1(a)  
28 of the License Agreement that they be identified as key personnel who must hold  
“senior management positions” for a period of three years. *See* Ex. B. to Notice of  
Removal, art. 6.1. That does not possibly make COH liable to Dr. Tang for anything.

1 reliance; and (4) damages. *Moncada v. W. Coast Quartz Corp.*, 221 Cal. App. 4th  
 2 768, 780 (2013); *U.S. Ecology, Inc. v. State*, 129 Cal. App. 4th 887, 901 (2005).  
 3 “The party claiming estoppel must *specifically* plead all facts relied on to establish  
 4 its elements,” *Patriot Sci. Corp. v. Korodi*, 504 F. Supp. 2d 952, 967 (S.D. Cal.  
 5 2007) (citing *Smith v. City & Cnty. of S.F.*, 225 Cal. App. 3d 38, 48 (1990))  
 6 (emphasis in original), as opposed to “vague and largely conclusory allegations,”  
 7 *Rosal v. First Fed. Bank of Cal.*, 671 F. Supp. 2d 1111, 1130 (N.D. Cal. 2009). The  
 8 plaintiff must essentially meet the pleading standards for each element of a cause of  
 9 action for breach of contract, with the exclusion of consideration. *US Ecology*, 129  
 10 Cal. App. 4th at 903; *Yari v. Producers Guild of Am., Inc.*, 161 Cal. App. 4th 172,  
 11 182 (2008). Dr. Tang has not pled any of the elements of his promissory estoppel  
 12 claim with specificity.

13 First, Dr. Tang fails to plead a clear and unambiguous promise. To be  
 14 enforceable, a promise must be sufficiently definite so that “a court can determine  
 15 the scope of the duty[,] and the limits of performance must be sufficiently defined  
 16 to provide a rational basis for the assessment of damages.” *Aquilar v. Int’l*  
 17 *Longshoremen’s Union Local #10*, 966 F.2d 443, 446 (9th Cir. 1992); *Glen Holly*  
 18 *Entm’t, Inc. v. Tektronix Inc.*, 343 F.3d 1000, 1017 (9th Cir. 2003). “[A]ny promise  
 19 which is to serve as the basis for a promissory estoppel claim or defense [must] be  
 20 as clear and well defined as a promise that could serve as an offer, or that otherwise  
 21 might be sufficient to give rise to a traditional contract supported by consideration.”  
 22 *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1106 (9th Cir. 2009). Dr. Tang claims that  
 23 COH promised “that it would license the CAR-T technology to a ‘Newco’ to be  
 24 owned in part by Dr. Tang.” Am. Compl. ¶ 46. As discussed above, Dr. Tang’s  
 25 vague allegation is not sufficiently definite, because it does not identify any of the  
 26 boundaries of the promise.

27 Second, Dr. Tang fails to plead that he reasonably and foreseeably relied  
 28 upon this promise. Conclusory allegations of reasonable reliance are insufficient; a

1 party must allege facts in support. *Patriot Sci. Corp.*, 504 F. Supp. 2d at 968 (citing  
 2 *Smith*, 225 Cal. App. 3d at 48). However, here again, Dr. Tang offers nothing more  
 3 than conclusory allegations that “Dr. Tang did in fact reasonably rely on [COH’s]  
 4 promise.” Am. Compl. ¶ 46. Dr. Tang does not explain how it could possibly be  
 5 reasonable for him to rely upon COH’s alleged promise, given that COH had no  
 6 control over whether Dr. Tang would obtain equity in Mustang, which is apparently  
 7 the only basis for his claim.

8 Third, Dr. Tang has not properly pled detrimental reliance. To do so, the  
 9 plaintiff must show that on the basis of the promise, he or she made a substantial  
 10 change of position. *See Newgent v. Wells Fargo Bank, N.A.*, No. 09cv1525, 2010  
 11 WL 761236, at \*6-7 (S.D. Cal. Mar. 2, 2010); *Smith*, 225 Cal. App. 3d at 48. Dr.  
 12 Tang, however, alleges only that he “facilitate[ed] the completion of the exclusive  
 13 license agreement.” Am. Compl. ¶ 46. Dr. Tang does not explain how, or why, his  
 14 involvement in negotiations constitutes a legally cognizable “detriment.”

15 In addition, Dr. Tang also does not allege that, but for COH’s alleged oral  
 16 promise, he would not have participated in negotiations over the license between  
 17 Mustang and COH. Elsewhere in the Amended Complaint, Dr. Tang alleges that it  
 18 was the Mustang Defendants’ promise of his participation in the new venture that  
 19 led him to work to conclude a License Agreement between Mustang and COH.  
 20 *See, e.g.*, Am. Compl. ¶¶ 18-19. Dr. Tang cannot plausibly allege—and he does not  
 21 allege—that, but for COH’s vague promise to him, he would not have worked on the  
 22 License Agreement. Dr. Tang may well have hoped to participate in Mustang in  
 23 the future, but his work towards that end did not depend upon any promise from  
 24 COH. The Amended Complaint contains no specific or plausible allegations  
 25 showing a change of position on the basis of COH’s promise.

26 Finally, Dr. Tang does not sufficiently allege damages. Again, Dr. Tang  
 27 offers conclusory assertions of damages for an unspecified amount and specific  
 28 performance of a stock certificate for 15% of Mustang. *Id.* ¶¶ 49-50. Such

conclusory assertions are insufficient to support a claim of promissory estoppel.

**C. Dr. Tang's Sixth Cause Of Action (For Breach Of The  
License Agreement) Fails To State A Claim Against COH**

As with the original Complaint, Dr. Tang remains unable to state any claim on his sixth cause of action—the only one pled against COH before—for breach of the alleged obligations owed to him as a claimed creditor third-party beneficiary of the License Agreement. This cause of action is pled “in the alternative,” and would be moot if the claims specifically referencing Dr. Tang’s alleged 15% interest in Mustang (not asserted against COH) were to succeed. Am. Compl. ¶ 61. In any event, Dr. Tang’s allegations that he is a creditor third-party beneficiary of the License Agreement between COH and Mustang are entirely conclusory and contradicted by the terms of the License Agreement itself as well as his other allegations.

**1. Dr. Tang Was Not A Third-Party Beneficiary  
To The License Agreement**

“[A] person seeking to enforce a contract as a third party beneficiary must plead a contract which was made expressly for his or her benefit and one in which it clearly appears that he or she was a beneficiary.” *Kearney v. Hyundai Motor Am.*, No. SACV09-1298, 2010 WL 8251077, at \*10 (C.D. Cal. Dec. 17, 2010 (quoting *Schauer v. Mandarin Gems of Cal., Inc.*, 125 Cal. App. 4th 949, 957 (2005)); Cal. Civ. Code § 1559. “Expressly, as used in the statute and case law, means ‘in an express manner; in direct or unmistakable terms; explicitly; definitely; directly.’” *In re NVIDIA GPU Litig.*, No. C 08–04312, 2009 WL 4020104, at \*6 (N.D. Cal. Nov. 19, 2009) (quoting *Schauer*, 125 Cal. App. 4th at 957). That a literal interpretation of the contract would result in a benefit to a third-party is insufficient to show that the party is an intended third-party beneficiary. *Id.*; *Neverkovec v. Fredericks*, 74 Cal. App. 4th 337, 348 (1999). Further, a shareholder/owner of a company who is not expressly made a third-party beneficiary in the agreement is

1 only an incidental (not a third-party) beneficiary thereof. *Benasra v. Marciano*, 92  
2 Cal. App. 4th 987, 992-93 (2001).

3 The Amended Complaint does not contain any specific or plausible  
4 allegations suggesting that when COH and Mustang entered into the License  
5 Agreement, they “expressly” and in “direct or unmistakable terms” did so with the  
6 intent of benefiting Dr. Tang. Indeed, the allegation is not remotely plausible.  
7 When Mustang and COH – allegedly with Dr. Tang’s involvement – negotiated a  
8 license agreement setting forth the terms upon which Mustang would pay for, and  
9 receive license for, COH’s CAR-T technology, they plainly did so as part of a  
10 transaction that would benefit the parties to the License Agreement, not third  
11 parties, such as Dr. Tang.

12 The Amended Complaint does not contain any allegations identifying  
13 language in the License Agreement that would impose an obligation upon COH or  
14 Mustang to provide a benefit to Dr. Tang. Indeed, it is telling that the Amended  
15 Complaint does not even identify which of the parties to the License Agreement  
16 was supposed to have the obligation that Dr. Tang now seeks to enforce. He alleges  
17 only that *all* Defendants – even those who were not parties to the License  
18 Agreement – “knew and intended that the license agreement was for Dr. Tang’s  
19 specific, individual benefit,” Am. Compl. ¶ 62, and that all of these Defendants  
20 (collectively) owed obligations to Dr. Tang that they sought to satisfy via the  
21 License Agreement, *id.* ¶¶ 62-64. Beyond such conclusory legal allegations, Dr.  
22 Tang provides no facts – much less any plausible facts – that COH (or Mustang)  
23 entered into the License Agreement for the purpose of granting him equity.

24 The Amended Complaint not only fails to identify any provisions in the  
25 License Agreement that would benefit Dr. Tang, but the terms of the agreement  
26 expressly rebut the suggestion that Dr. Tang or any third party had any enforceable  
27 rights under the agreement. The dispute resolution mechanism in the License  
28 Agreement names only COH and Mustang as potential parties. License Agreement



1 art. 12, Ex. B to Notice of Removal. Similarly, the assignment and delegation  
 2 provision bars Mustang from assigning any of its rights or obligations without  
 3 COH's consent, demonstrating that there was no intent to benefit Dr. Tang or any  
 4 other third-party. *Id.* art. 14.1.

5 Additionally, the License Agreement defines a "Third-party" as "a Person  
 6 that is neither a Party to this Agreement nor an Affiliate of a Party," and uses the  
 7 terms only in Article 4.9, concerning the royalty offsets to certain third-party  
 8 licensors. *Id.* arts. 1.38, 4.9. To the extent that COH or Mustang envisioned the  
 9 License Agreement as obligating each of them to third parties, such a role was  
 10 limited to a specific category of third-parties of which Dr. Tang does not claim to  
 11 be a part. Finally, the License Agreement contains an integration clause making  
 12 clear that it was the entire agreement between the parties, and there were no  
 13 separate promises made to any third party. *Id.* art. 14.2; *see also Grey v. Am. Mgmt.*  
 14 *Servs.*, 204 Cal. App. 4th 803, 807 (2012) ("The existence of an integration clause  
 15 is a key factor in divining" "whether the parties intended the contract to be a final  
 16 and complete expression of their agreement.").

17 In addition, although the granting of equity generally is accomplished  
 18 through detailed agreements intended to comply with federal and state securities  
 19 laws, the License Agreement does not contain any provisions that would govern the  
 20 grant of equity to Dr. Tang. This notably stands in stark contrast to the 10% of  
 21 Mustang that COH was to receive under the License Agreement, which includes  
 22 specific provisions concerning (1) the timing of Mustang's issuance of stock to  
 23 COH; (2) the number of shares Mustang would provide to COH; (3) the class of  
 24 shares Mustang would provide to COH; (4) the legal effect of certain qualified  
 25 financings achieved prior to a specified qualified financing protection ceiling; (5)  
 26 the awarded stock's status as restricted securities not registerable with the SEC; (6)  
 27 the legal and contractual effect of Mustang's first public offering; and (7) other  
 28 important issues regarding the stock. *See* License Agreement art. 4; Ex. B to Notice

1 of Removal. If COH and Mustang intended that the License Agreement would  
 2 provide stock to Dr. Tang, then they would surely have included similarly detailed  
 3 provisions concerning the scope of his entitlement.

4 2. Dr. Tang Was Not A Creditor Third-Party Beneficiary  
 5 To The License Agreement

6 Because Dr. Tang does not sufficiently plead that that he was a third-party  
 7 beneficiary to the License Agreement, he necessarily does not sufficiently plead  
 8 that he is a *creditor* third-party beneficiary. Am. Compl. ¶ 65. “A creditor  
 9 beneficiary is a party to whom a promisee owes a preexisting duty which the  
 10 promisee intends to discharge by means of a promisor’s performance.” *Lake*  
 11 *Almanor Assocs. L.P. v. Huffman-Broadway Grp., Inc.*, 178 Cal. App. 4th 1194,  
 12 1200 (2009). By claiming to be a creditor third-party beneficiary, Dr. Tang appears  
 13 to be alleging that COH had a preexisting duty to provide him with 15% of  
 14 Mustang’s equity, and that COH agreed to use the License Agreement as the  
 15 vehicle for accomplishing that alleged preexisting duty. COH, however, did not  
 16 have any control over Mustang, and Dr. Tang does not allege that COH had a  
 17 preexisting duty to provide him with 15% of the equity. Thus, the allegation that  
 18 Dr. Tang was a creditor to COH under the License Agreement is non-sensical.

19 Finally, Dr. Tang’s other allegations in the Amended Complaint confirm that  
 20 COH did not intend that the License Agreement would discharge any legal duty  
 21 owed to Dr. Tang concerning his alleged equity interest in Mustang. Dr. Tang  
 22 alleges that, after the execution of the License Agreement, he requested that  
 23 Mustang provide him his stock and Mr. Weiss promised to work on certain  
 24 paperwork with regard to this request. Am. Compl. ¶¶ 21-22. Dr. Tang’s  
 25 allegations suggest at most that he understand that Mustang – and not COH – owed  
 26 him the shares. Moreover, the recognition that additional paperwork would be  
 27 necessary to award Dr. Tang’s alleged equity interest stands directly contrary to Dr.  
 28 Tang’s assertion that he was a creditor third-party beneficiary under the License



1 Agreement, as it shows that the License Agreement itself was not sufficient to  
 2 impart the duty to Dr. Tang as an alleged creditor. *See, e.g., COAC, Inc. v.*  
 3 *Kennedy Engineers*, 67 Cal. App. 3d 916, 918-22 (1977).

### 4 3. Dr. Tang Fails To Plead Any Other Elements of a Breach of Contract

5 In addition to failing to sufficiently plead that he is a third-party beneficiary  
 6 of the License Agreement, Dr. Tang also fails to plead the other elements of a claim  
 7 for breach of contract in any but conclusory terms. Thus, Dr. Tang does not  
 8 identify any actions that COH took to breach the License Agreement. He alleges  
 9 only that Mustang failed to provide him the promised shares, not that COH had any  
 10 control over them under the License Agreement. Similarly, Dr. Tang's allegations  
 11 that COH caused him any harm and, indeed, that he suffered any harm, are entirely  
 12 conclusory. Am. Compl. ¶ 67; *see also Benedict v. Hewlett-Packard Co.*, No. 13-  
 13 CV-00119, 2014 WL 234218, at \*4 (N.D. Cal. Jan. 21, 2014). As such, Dr. Tang  
 14 "fails to state a cause of action" against COH, and that "failure is obvious according  
 15 to the settled rules of the state." *Morris*, 236 F.3d at 1067.

## 16 **V. COH IS NOT A NECESSARY PARTY TO THIS ACTION**

17 In the original Complaint, Dr. Tang suggested that he had named COH, not  
 18 because it had actually taken any action in breach of a legal duty, or that it had  
 19 taken any action to cause him harm, but because as a shareholder in Mustang, COH  
 20 was a necessary party to the relief he sought from this Court, namely the award of  
 21 15% of Mustang's equity. Dr. Tang cites no authority for that proposition, and it is  
 22 not so. Dr. Tang has plainly alleged that the Mustang Defendants would provide  
 23 him 15% of the newly formed company. While those allegations are plainly  
 24 deficient (and subject to a pending motion to dismiss), if they were meritorious, the  
 25 Court could order one or more of the Mustang Defendants to perform, or to pay  
 26 damages, without the need for COH to be a party to this action.

27 Under Federal Rule of Civil Procedure 19(a)(1)(B), a party is necessary and  
 28 should be joined if it claims an interest relating to the subject of the action and is so

1 situated that a disposition of the action in its absence may, as a practical matter,  
 2 impair or impede its ability to protect that interest. California's joinder rule is  
 3 similar. *See* Cal. Civ. Code § 389. Parties have typically litigated the "necessary  
 4 party" rule in contexts where the court cannot acquire jurisdiction over the absent  
 5 defendant, or where the *plaintiff* has sought to preserve diversity jurisdiction by  
 6 failing to bring suit against an indispensable party. *See Shermoen v. United States*,  
 7 982 F.2d 1312 (9th Cir. 1992) (holding that absent Indian tribes were necessary to  
 8 the litigation and could not be joined because of sovereign immunity); *Takeda v.*  
 9 *Nw. Nat. Life. Ins. Co.*, 765 F.2d 815, 819 (9th Cir. 1985) (holding that the non-  
 10 diverse party was "indispensable" to the action and must be joined). By contrast,  
 11 here, Dr. Tang seeks to rely upon Rule 19(a) as an excuse to sue a party that is  
 12 subject to the Court's jurisdiction, but should never have been joined here, because  
 13 Dr. Tang lacks any legitimate claims against it.

14 Lacking any actionable claims against COH, Dr. Tang argues that he has  
 15 sued COH because the Court would otherwise be unable to order complete relief or  
 16 because COH's interests would otherwise be impaired. To support his claim, Dr.  
 17 Tang cites *Shermoen*, 982 F.2d at 1317, but in that decision, the Ninth Circuit made  
 18 clear that is not *obliged* to name an absent party, such as COH, absent a concrete  
 19 showing that the party's interests are likely to be impaired or impeded. As the  
 20 Court observed in *Shermeon*, to determine if a party's interests are impaired or  
 21 impeded by litigation in its absence, the Court applies an adequate representation  
 22 test. Under this test, the Court evaluates whether: (1) the existing parties "will  
 23 undoubtedly make all of the absent party's arguments"; (2) the existing parties are  
 24 "capable of and willing to make such arguments"; and (3) "the absent party would  
 25 offer any necessary element to the proceedings the present parties would neglect."  
 26 *Id.* at 1318 (internal quotation marks omitted). Dr. Tang does not claim that COH  
 27 would make arguments not available to the Mustang Defendants or that COH  
 28 would add any "necessary element" to the proceeding.

1           Notably, in the context of shareholder suits, courts have recognized that one  
 2 shareholder may adequately represent the other shareholders' interests, because the  
 3 shareholders' interests are identical. *See Sanguinetti v. Viewlogic Sys.*, No. C 95  
 4 2286, 1996 WL 33967, at \*4 (N.D. Cal. Jan. 23, 1996). As a result, "[the first  
 5 defendant] will 'undoubtedly make' all the arguments that [the second defendant]  
 6 otherwise would make. Thus, [the second defendant's] absence does not as a  
 7 practical matter impair or impede its ability to protect its interest in this litigation."  
 8 *Id.* Here, similarly, to the extent that COH's interests as a shareholder are at issue,  
 9 COH could expect that the Mustang Defendants will "undoubtedly make" all the  
 10 arguments that COH otherwise would make, and COH's absence "does not as a  
 11 practical matter impair or impeded its ability to protect its interest in this litigation."  
 12 1996 WL 33967, at \*4.

13           Dr. Tang also claims that COH is a necessary party because "complete relief  
 14 cannot be afforded in this action in its absence and the determination in this action  
 15 could impair CoH's ability to protect its claimed interest in Mustang and the  
 16 License Agreement, the subject matters of this litigation." Mot. to Remand, at 7.  
 17 However, Dr. Tang fails to explain why complete relief could not be afforded in  
 18 COH's absence.

19           First, Dr. Tang alleges that COH's interests would be impaired because this  
 20 action would affect the ownership structure of Mustang, a company in which COH  
 21 owns shares. *Id.* However, Dr. Tang does not allege that COH ever promised to  
 22 give him any Mustang shares, only that Mustang and/or the Mustang Defendants  
 23 did so. Dr. Tang offers no legal support for the position that a plaintiff's effort to  
 24 sue a company or one shareholder for promised shares necessarily requires that  
 25 plaintiff to implead each and every shareholder to that company. Indeed, while Dr.  
 26 Tang's position here is alleged against a company with only a handful of  
 27 shareholders, his logic would presumably sweep thousands of shareholders if  
 28 applied to a much larger public company. That is obviously absurd.

1           Next, Dr. Tang claims that COH's interests would be impaired because,  
 2           should he prevail, COH's equity in Mustang might be diluted because his 15%  
 3           equity in Mustang might come at COH's expense. *Id.* But the terms of the License  
 4           Agreement rebut this argument. According to Article 4.3 of the License  
 5           Agreement, COH has a right to "10% of the total number of shares of Qualifying  
 6           Stock." Ex. B. to Notice of Removal, at Art. 4.3. Dr. Tang's potential 15% equity  
 7           ownership does not have any effect on the total number of shares of qualifying  
 8           stock. To the extent that Dr. Tang received additional shares, they would come  
 9           from the existing stock of the company and would not dilute COH's interests as a  
 10          result.

11          Finally, Dr. Tang also claims that COH has an interest in this case, because it  
 12          "seek[s] a result to which CoH explicitly 'objects.'" Mot. to Remand at 7. Dr.  
 13          Tang does not cite any case holding that a person not otherwise properly in a  
 14          litigation may become a necessary party should it "object" to the relief sought by  
 15          the plaintiff. In any event, the argument itself is completely meritless, because Dr.  
 16          Tang has misconstrued the Joint 26(f) Report, and COH has not had occasion to  
 17          take any position on the relief actually sought.

18          In the Motion to Remand, Dr. Tang claims that Defendants have taken the  
 19          position that "they could not reach an employment agreement with Tang due to the  
 20          fact that 'CoH objected.'" *Id.* That is simply a false statement. In the Joint Rule  
 21          26(f) Report, Defendants quite clearly argued that Dr. Tang lost the opportunity to  
 22          serve as an officer of Mustang because the SEC named him as a material participant  
 23          in a pending insider trading case. *See* Joint Rule 26(f) Report, at 4-5. At the time,  
 24          Mustang had been negotiating with Dr. Tang to serve as its COO, not as its CEO.  
 25          In the Joint Rule 26(f) Report, Defendants note in passing that at one point, they  
 26          had contemplated making Dr. Tang CEO, but that COH had "objected" to that  
 27          request. Joint Rule 26(f) Report, at 4. That issue, however, has nothing to do with  
 28          this lawsuit. Dr. Tang has never argued that he had a vested right to become

1 Mustang's CEO, and he has not filed any claim in this action that would ask this  
2 Court to make it so. COH plainly has not "objected" to a result that Dr. Tang  
3 "specifically seek[s]" in this action, and in any event, this issue is irrelevant to the  
4 Rule 19(a) analysis.

5 **VI. CONCLUSION**

6 For the reasons stated above, Defendants respectfully request that this Court  
7 deny Dr. Tang's Motion to Remand.

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9 Dated: April 4, 2016

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